

March 22, 2006

Chairman Robert A. DeLeo  
House Ways and Means Committee  
State House, Room 243  
Boston, MA 02133

Dear Chairman DeLeo:

We are writing to comment on H.B. 4741, now before your committee. Given that there was no hearing on the specifics included in this bill, we ask that our perspective be given serious consideration before any further action is taken on the legislation.

We understand the importance of job creation and economic development and we support thoughtful reforms that will make our state stronger economically. At the same time, the environment must be protected through good planning that guides development to appropriate sites. We have no objection to many components of the legislation and believe that better coordination of the permitting process and technical assistance to communities makes good sense.

However, we feel very strongly about certain aspects of the bill that we believe could threaten the environment and curtail citizens' rights. We absolutely oppose Sections 8 and 9 of the bill that would eliminate the right to intervene and the 10 citizen suit provision of chapter 91. Our waterfront areas are a public trust, and the ability of citizens to speak out and oppose or seek modifications to inappropriate development in these areas is critically important. Doing away with this ability, without any public debate, gravely concerns us. We urge you to safeguard citizens' ability to intervene in a meaningful way when there are serious concerns about proposals that negatively impact the public's interests in the waterfront. Limiting appeals to "aggrieved parties" on development decisions which ignore public trust interests would be a serious mistake. Recent examples of the value of Chapter 91 public trust rights include the original plans for a new Boston University sailing pavilion and Fan Pier. In both instances, development sites were altered to better accommodate public rights. In neither instance, however, was the right to develop halted. Sections 8 and 9 should be removed from the legislation.

Secondly, we have concerns about Section 11 of the bill, which would allow a developer to move forward with a project while a permit is being appealed. Allowing site alterations and investment while an appeal is being heard pressures the court to find in the developer's favor. Should the court find against a developer, site alterations made during the appeal could leave the site scarred irreparably. Expedited permitting should not mean development at all environmental costs, and the potential costs of this provision are too high. Section 11 amends G.L. c.40A, §11 by deleting the requirement that a variance or special permit does not take effect until any appeal has been dismissed or denied. We ask that Section 11 of the bill be deleted in its entirety from the bill.

Thirdly, while under Section 13 (containing revisions to Chapter 43D of the General Laws) the local and state permitting process is extended from 120 to 180 days and the MEPA process is “to be held concurrently” under revised G.L. c.43D, §14, the Environmental Impact Reports could be filed too late to be of any practical use by the local and state permitting authorities. Therefore, the bill should be amended to require the applicant to complete the MEPA process within time limits sufficient for both local and state permitting authorities to make use of the environmental impact reports prepared by the applicant.

Fourthly, Section 15 creating a new Permit Division in Superior Court unnecessarily complicates the state’s court system. The Land Court already has judges well versed in environmental and land use law. No explanation has been provided as to why appeals should not be directed to the Land Court.

Finally, we are concerned that there are no locational criteria included in what should be considered a priority development site. We support an approach to development where consideration is given to locating jobs close to transportation and where people live. The legislature adopted this framework when it adopted chapter 40R last session and we urge you to apply the same approach to commercial development as well.

Thank you for your attention. We would be happy to meet with you to further discuss these issues.

Sincerely,

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Charles River Watershed Association

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Conservation Law Foundation

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Cc: Speaker Salvatore DiMasi  
Chairman Michael Rodrigues  
Chairman Frank Smizik